

## II. Proceedings and Summary of Issues Addressed by the Working Group

### A. The Development of the Railroad Safety Advisory Committee (RSAC) Accident/Incident Reporting Working Group

FRA developed the Notice of Proposed Rulemaking (NPRM), published October 9, 2002, and this final rule through its Railroad Safety Advisory Committee (RSAC). See 67 FR 63022. RSAC was formed by FRA in March of 1996 to provide a forum for consensual rulemaking and program development. The Committee has representatives from all of the agency's major interest groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically proposes to assign a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If a working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

On April 23, 2001, FRA presented task statement 2001-1, regarding accident/incident reporting conformity, to the full RSAC. When FRA presented the subject of revising its accident reporting regulations and Guide to RSAC, the agency stated that the purpose of the task was to bring FRA's regulations and Guide into conformity with OSHA's final rule, and to make certain other technical amendments. The task was accepted, and a working group was established to complete the task.

Members of the Working Group, in addition to FRA, include representatives of the following 26 entities: the American Public Transportation Association (APTA); the National Railroad Passenger Corporation (Amtrak); the Association of American Railroads (AAR); The American Short Line and Regional Railroad Association (ASLRRA); the Brotherhood of Locomotive Engineers (BLE); the Brotherhood of Railroad

Signalmen (BRS); Transportation Communications International Union/ Brotherhood Railway Carmen (TCIU/BRC); Canadian National Railway Company (CN) and Illinois Central Railroad Company (IC); the Sheet Metal Workers International Association; the Brotherhood of Maintenance of Way Employees (BMWE); The Burlington Northern and Santa Fe Railway Company (BNSF); Canadian Pacific Railway Company (CP); Consolidated Rail Corporation-Shared Assets (CR); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Union Pacific Railroad Company (UP); The Long Island Rail Road (LIRR); Maryland Transit Administration (MARC); Southern California Regional Rail Authority (Metrolink); Virginia Railway Express (VRE); Trinity Rail (TR); North Carolina Department of Transportation (NCDOT); Northeast Illinois Regional Commuter Rail Corp. (Metra); the United Transportation Union (UTU); and Wisconsin Central Ltd. (WC).

#### B. The Working Group's Resolution of Issues Prior to Publication of the NPRM

Prior to the publication of the NPRM, the Working Group held a total of eight meetings related to this task statement. As a result of these meetings, the Working Group developed consensus recommendations proposing to change the FRA regulations and Guide with respect to all issues presented except for one. Consensus could not be reached on whether railroads should be required to report deaths and injuries of the employees of railroad contractors who are killed or injured while off railroad property. Prior to this rulemaking, FRA had interpreted part 225 as not requiring the reporting of such cases. After the last Working Group session before publication of the NPRM, FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business. To accomplish this result, FRA proposed a three-tier definition of the term "event or exposure arising from the operation of a railroad." See proposed Sec. 225.5.

The NPRM intended to reflect a Working Group consensus on all other issues that were summarized in the preamble. With regard to part 225, the Working Group recommended amending Sec. 225.5, which contains definitions; Sec. 225.9, which pertains to telephonic reporting of certain accidents/incidents; and Sec. 225.19(d), which pertains to reporting deaths, injuries, and occupational illnesses. To make certain other miscellaneous conforming changes, the Working Group recommended amending Sec. 225.21, which pertains to forms; Sec. 225.23(a), which pertains to joint operations; Sec. 225.33, which pertains to internal control plans; and Sec. 225.35, which pertains to access to records and reports. To address occupational illnesses and injuries that are privacy concern cases, claimed occupational illnesses, and other issues, the Working Group also recommended amending Sec. 225.25, pertaining to recordkeeping. Finally, the Working Group recommended adding a new Sec. 225.39, pertaining to FRA's policy on how FRA will maintain and make available to OSHA certain data FRA receives pertaining to cases that meet the criteria as recordable injuries or illnesses under OSHA's regulations and that are reportable to FRA, but that would not count towards the data in totals compiled for FRA's periodic reports on injuries and illnesses.

With regard to the Guide, the Working Group proposed to revise Chapter 1, pertaining to an overview of accident/incident reporting and recordkeeping requirements; Chapter 2, containing definitions; Chapter 4, pertaining to Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record"; Chapter 6, pertaining to Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; and Chapter 7, pertaining to Form FRA F 6180.54, "Rail Equipment Accident/ Incident Report"; and to create a new Chapter 12, pertaining to reporting by commuter railroads, and a new Chapter 13, pertaining to new Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to Be Work-Related." The Working Group also proposed changing various codes used in making accident/incident reports to FRA. These codes are listed in appendices of the Guide. The Working Group supported revising Appendix C, "Train Accident Cause Codes"; Appendix E, "Injury and Illness Codes," including revising codes related to the nature of the injury or illness, and the location of the injury; and Appendix F, "Circumstance Codes." The latter included revising codes related to

the physical act the person was doing when hurt; where the person was located when injured; what, if any, type of on-track equipment was involved when the person was injured or became ill; what event was involved that caused the person to be injured or become ill; what tools, machinery, appliances, structures, or surfaces were involved when the person was injured or became ill; and the probable reason for the injury or illness. Further, the Working Group advocated revising Appendix H, pertaining to accident/incident reporting forms, particularly Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report," and Form FRA F 6180.81, "Employee Human Factor Attachment." Finally, the Working Group recommended making additional conforming changes to the Guide.

With regard to part 219, FRA decided that two terms used in that part, "reportable injury" and "accident or incident reportable under Part 225 of this chapter," should be given a slightly different meaning. In particular, the terms would be defined for purposes of part 219 as excluding accidents or incidents that are classified as "covered data" under proposed Sec. 225.5 (i.e., accidents or incidents that are reportable solely because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication was taken). In part 240, the term "accidents or incidents reportable under part 225" is used in Sec. 240.117(e)(2). Instead of creating a separate definition of the term for purposes of part 240, an explicit exception for covered data would be added to Sec. 240.117(e)(2) itself.

Each of these issues is described in greater detail in the next sections of the preamble. The full RSAC accepted the recommendations of the Working Group as to those changes that were proposed for part 225 and the Guide on which consensus was reached. With regard to the one issue on which consensus was not reached, and with regard to the minor proposed revisions to parts 219 and 240, not presented to the Working

Group, the full RSAC accepted FRA staff recommendations. In turn, FRA's Administrator adopted the recommendations embodied in the proposal, and the NPRM was subsequently published.

#### C. Comments Received and Post-NPRM Working Group Meeting

After publication of the NPRM on October 9, 2002, FRA received comments on the proposed rule and Guide from AAR \1\ and a private citizen.\2\ On December 4, 2002, the Working Group held a meeting in Washington, DC to discuss the comments on the NPRM. Because the majority of AAR's comments focused on clarifying the Guide, many of the issues were able to be resolved at the meeting. RSAC consensus on those issues and the summary of the Working Group meeting was confirmed by ballot on January 29, 2003. For those issues where consensus could not be reached, AAR sent FRA a post-meeting letter further explaining its views. The unresolved issues were outlined and presented to the Deputy Administrator, who acted on the rulemaking under a delegation from the Administrator, along with copies of the comments and responses, for resolution.

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\1\ AAR's comments on the NPRM will be discussed throughout this preamble. After the publication of the NPRM and a discussion of the comments at the final Working Group meeting, AAR submitted a letter, dated December 13, 2002, and a supplemental response that was e-mailed to FRA on January 3, 2003.

\2\ FRA has reviewed the comments from the private citizen, which did not specifically address any of the proposed amendments and vaguely asserted that FRA was not fulfilling its duty to carry out statutory mandates. Although the commenter did not provide specific recommendations to FRA on how to revise the NPRM, FRA believes that the provisions in the final rule will improve the overall quality and integrity of FRA's accident/incident data.

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